

## SEARCH & SEIZURE

**City of Los Angeles v. Patel, --- U.S. --- (2015)**

**Decided June 22, 2015**

**FACTS:** Under Los Angeles city ordinance (the municipal code), every hotel operator must keep a record of all guests (collecting specific information) and make that information available to any LAPD officer upon demand. Guests paying with cash and who rent a room for less than twelve hours must provide photo ID, and that information must also be collected. For those using a credit card at an electronic kiosk, the credit card information must also be provided. That information must be kept at our near the reception desk for 90 days. Failure to provide the records upon demand was a misdemeanor.

A group of motel operators filed suit, challenging the constitutionality of the ordinance. The District Court ruled in favor of the City, finding that the motel operators “lacked a reasonable expectation of privacy in the records subject to inspection. The Ninth Circuit originally agreed and affirmed, but reversed its decision, finding that the business records are the hotel’s private property.

The City requested certiorari and the U.S. Supreme Court granted review.

**ISSUE:** May municipalities require a business owner to submit to an examination of their business records without a court order (such as an administrative subpoena) or an exigent circumstance?

**HOLDING:** No

**DISCUSSION:** The Court looked first, as it always must, to the language of the Fourth Amendment. The Court agreed that “searches conducted outside the judicial process ... are per se unreasonable,” “subject only to a few specifically established and well delineated exceptions.”<sup>1</sup> This rule ““applies to commercial premises as well as to homes.”<sup>2</sup> The court characterized the search in this case, however, as a search that serves “a “special need” other than conducting criminal investigations: They ensure compliance with the record- keeping requirement, which in turn deters criminals from operating on the hotels’ premises. In administrative searches, the “the subject of the search must be afforded an opportunity to obtain precompliance review before a neutral decisionmaker.”<sup>3</sup> In this case, however, a business owner who refuses to produce the records “can be arrested on the spot.” The court noted, that all that is required is an opportunity for review, and it would only be required “in those rare instances where a hotel operator objects to turning over the registry.” Such searches would be lawsuit if performed under an administrative subpoena, which can be obtained without probable cause. Further, in the rare situations where an operator may seek review, the records can be guarded until a hearing can be held.”<sup>4</sup>

The Court continued:

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<sup>1</sup> Arizona v. Gant, 556 U. S. 332 (2009) (quoting Katz v. U.S., 389 U. S. 347 (1967)).

<sup>2</sup> Marshall v. Barlow’s, Inc., 436 U. S. 307 (1978).

<sup>3</sup> See v. City of Seattle, 387 U.S. 541 (1967).

<sup>4</sup> Riley v. California, 573 U. S. \_\_\_\_ (2014); Illinois v. McArthur, 531 U. S. 326 (2001); Missouri v. McNeely, 569 U. S. \_\_\_\_ (2013)

Of course administrative subpoenas are only one way in which an opportunity for precompliance review can be made available. But whatever the precise form, the availability of precompliance review alters the dynamic between the officer and the hotel to be searched, and reduces the risk that officers will use these administrative searches as a pretext to harass business owners.

The Court noted that law enforcement may still seek consent to examine the records, and hotel operators may be compelled under proper administrative warrants, even those issued ex parte, or “if some other exception to the warrant requirement applies, including exigent circumstances.” The Court disagreed with the argument that hotels are closely regulated businesses, noting that only four industries have historically had such a background of government regulation that they would have no reasonable expectation of privacy: liquor sales, firearms dealing, mining and running an auto junkyard. Unlike those businesses, operating a hotel does not pose a “clear and significant risk to the public welfare.” Holding that a business is closely regulated is the exception.

The Court affirmed the Ninth Circuit’s ruling.

***NOTE:*** *Kentucky does not have a comparable rule for hotels/motels, but does have similar statutes that apply to pawnbrokers, KRS 226.040, and pharmacies, KRS 218A.1446. It is also possible that local jurisdictions may have ordinances similar to that in question in this case.*

FULL TEXT OF OPINION: [http://www.supremecourt.gov/opinions/14pdf/13-1175\\_2qe4.pdf](http://www.supremecourt.gov/opinions/14pdf/13-1175_2qe4.pdf)